

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HERMAN L. DAVIS,

Plaintiff,

v.

JOHN DINGELL
VA CENTER,

Defendants.

Case No. 17-13402

Hon. Terrence G. Berg

Magistrate Judge Mona K.
Majzoub

ORDER ADOPTING REPORT AND RECOMMENDATION
(DKT. 5)

This matter is before the Court on Magistrate Judge Mona K. Majzoub's June 12, 2018 Report and Recommendation (Dkt. 5), recommending that Defendant's Motion to Set Aside Default Judgment and to Dismiss Plaintiff's Complaint (Dkt. 2) be granted without prejudice. Plaintiff's claim arises from a default judgment he received against the government in state court, which the United States Attorney's Office then removed and challenged. Dkt. 2. Plaintiff's complaint alleges that the Defendant VA Center

improperly billed him for medical care after failing to inform him it did not accept Medicare. Dkt. 1-1 at Pg ID 8.

Plaintiff failed to respond to Defendant's Motion to Set Aside Default Judgment and Dismiss, which argued both that Defendant was not properly served and that Plaintiff failed to properly allege the waiver of sovereign immunity necessary to assert his claims, or to adequately plead those claims. Dkt. 2 at Pg ID 24-33.

Magistrate Judge Majzoub subsequently issued her Report and Recommendation finding that Plaintiff had improperly served Defendant; that the court lacked subject matter jurisdiction over the dispute because the United States has not waived sovereign immunity for suits for money damages like this one; and that Plaintiff had failed to adequately state a claim. Dkt. 5 at Pg ID 47-53.

The Court has reviewed the Magistrate Judge's Report and Recommendation. The law provides that either party may serve and file written objections "[w]ithin fourteen days after being served with a copy" of a report and recommendation.

28 U.S.C. § 636(b)(1). The district court will make a “*de novo* determination of those portions of the report . . . to which objection is made.” *Id.*

Plaintiff filed a Motion for Extension of Time to File Objections on June 22, 2018, which the court granted until July 6, 2018. Plaintiff missed this deadline and failed to file any objections in a timely manner. Consequently, the court will treat the R&R as one without party objections. Under such circumstances the district court is not obligated to independently review the record. *See Thomas v. Arn*, 474 U.S. 140, 149-52 (1985). The Court will therefore accept the Magistrate’s Report and Recommendation of June 12, 2018—that Defendant’s Motion to Set Aside Default Judgment and Dismiss be granted, and Plaintiff’s Complaint dismissed without prejudice—as this Court’s findings of fact and conclusions of law.

Accordingly, it is hereby **ORDERED** that Magistrate Judge Majzoub’s Report and Recommendation of June 12, 2018 is **ACCEPTED** and **ADOPTED** and that Plaintiff’s claims are **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Dated: July 31, 2018

s/Terrence G. Berg

TERRENCE G. BERG

UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed,
and the parties and/or counsel of record were served on July 31,
2018.

s/A. Chubb

Case Manager